IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No. 26 of 2007

Date of Decision: 29.10.2007

Fithu … Appellant

Versus

State of H.P.& ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Appellant : Mr. Onkar Jairath, Advocate.

For the Respondent(s) : Mr. M.S.Chandel, Advocate General with Mr. J.S.Guleria, Law Officer, for respondents 1 & 2.

Mr. Jagdish Thakur, Advocate, for respondents No.3 to 5.

Deepak Gupta, J (Oral).

This Letters Patent Appeal is directed against the judgment dated 3.5.2007 passed by a learned Single Judge of this Court in CWP No. 120 of 2005 whereby he has dismissed the writ petition.

The brief facts of the case are that consolidation proceedings took place in village Tikka Barota Dhangota Tappa Bhatawal, Tehsil Barsar, District Hamirpur to which the private parties belong in the year 1984-85. On 15.8.1985, an order was passed on the spot by the Consolidation Officer on the objections

filed by Shri Dhimu Ram respondent No.3 herein. In the said order, the presence of the appellant was marked in person. The petitioner challenged the said order before the Settlement Officer by filing an appeal being appeal No. 165 of 2000 more than 15 years after the order had been passed on 15.8.1985. This appeal was dismissed on 9.10.2000 on the ground that it was time barred. Thereafter the present appellant instituted an appeal under Section 30(4) of H.P.Holdings (Consolidation and Prevention of Fragmentation), Act, 1971 (hereinafter referred to as the Act), before the Additional Director of Holdings. This appeal was filed on 14.9.2001 more than one year after the impugned order was passed on 9.10.2000. The Appellate Authority, allowed the appeal vide order dated 15.5.2004. On the face of it, the order appears to be a consent order.

Respondent- Dhimu Ram challenged the said order by filing a revision petition before the Director of Consolidation. In the appeal, it was specifically averred that Shri N.K.Thakur was never engaged as counsel by Shri Dhimu Ram before the Additional Director and no consent had been obtained. Various other legal points were raised including the point that the appeal had been entertained though it was highly time barred and even if the appeal was to be allowed, the matter should have been remanded. The crux of the arguments was that the appellate authority could not have gone into the merits without first deciding the question of limitation. The Director Consolidation, allowed the revision petition filed by Dhimu Ram on 20.12.2004. Aggrieved

against the said order, the appellant/petitioner filed a CWP No. 120 of 2005 in this Court.

The learned Single Judge after hearing the parties, came to the conclusion that the Additional Director Consolidation had wrongly entertained the appeal without going into the question whether the delay of 15 years in filing the appeal against the order dated 15.8.1985 could be condoned or not. Aggrieved against the said order, the present appeal has been by the appellant/petitioner.

Shri Onkar Jairath, learned counsel for the appellant contended that the order dated 15.8.1985 per se is not a legal order as no office would have functioned on 15.8.1985 this being Independence Day. He has further averred that the order of the Additional Director in appeal is an appropriate order based on the order of the consolidation officer. It has also been averred that the order dated 15.8.1985 was passed in the absence of the present appellant.

We had called for the record of the case and we find that though specific notice does not appear to have been issued to the present appellant/petitioner in the objections filed by respondent Dhimu Ram before the Consolidation Officer. The record, however, shows that the Consolidation Officer, toured the areas in which the consolidation was to take place from 13.8.1985 to 16.8.1985. On 5.8.1985, he was to be in the village for this purposes. Public notice of the hearing had been given to the villagers and the presence of the appellant has been marked in the order dated 15.8.1985.

No doubt, normally no court functions on Independence Day. However, from the record produced before us, it appears that the Consolidation Officer went from village to village and was taking up the cases on the spot. He took up the matters in the villages of the parties on 15.8.1985. Taking up the case on 15th August, would be a mere irregularity and would not make the order a nullity or illegal one. It has been urged before us that the appellant was not given notice and was not heard in the matter. This ground was not taken in the grounds of appeal filed in the year, 2000.

As observed above, the order was passed by the Consolidation Officer on 15.8.1985. The appeal was filed in the year 2000, more than 15 years after the order had been passed. In the appeal which is drafted by a counsel, there is no averment or assertion that the present appellant did not receive any notice of the objection or that he was not heard before passing of the order dated 15.8.1985. It is only after the respondent Dhimu Ram filed a suit against the present appellant that he had encroached upon his land that the appellant filed an appeal. This appeal was delayed for more than 15 years and was dismissed on this ground alone. The first appellate authority did not go into the merits of the case. Thereafter an appeal was filed before the Additional Director of Consolidation. This appeal was also time barred. There is nothing on record to show how this time barred appeal was entertained. Even if this appeal had to be allowed, at best the matter could have been remanded because the Settlement Officer had not given any finding on the merits of the case. The

Director of Consolidation in our opinion, rightly held that an appeal filed by the present appellant was highly belated and could not have been entertained and he could not be permitted to unsettle the position which was settled by the Consolidation Officer 15 years back.

The learned Single Judge has upheld the order of the Director of Consolidation. We find no reason to interfere in the same. The appeal is accordingly dismisised.

(Deepak Gupta), J.

October 29, 2007. (V.K.Ahuja),J.

s.